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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/758,123  | 01/16/2004  | Robert O' Leary      | 64228-00003USPT     | 5033             |
| 24238   | 7590        | 10/04/2005           | EXAMINER            |                  |
| JENKENS & GILCHRIST<br>1401 MCKINNEY<br>SUITE 2600<br>HOUSTON, TX 77010 |             |                      | DAVIS, RUTH A       |                  |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             | 1651                 |                     |                  |

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                 |
|------------------------------|-----------------|-----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)    |
|                              | 10/758,123      | O' LEARY ET AL. |
|                              | Examiner        | Art Unit        |
|                              | Ruth A. Davis   | 1651            |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 and 10-72 is/are pending in the application.
- 4a) Of the above claim(s) 25-48 is/are withdrawn from consideration.
- 5) Claim(s) 1-2,4-7,10-24,49-50,52-53 is/are allowed.
- 6) Claim(s) 3,12,51,54,55 and 58-71 is/are rejected.
- 7) Claim(s) 56,57 and 72 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

Applicant's amendment and response filed on July 11, 2005 has been received and entered into the case. Claims 8 – 9 are canceled; claims 49 – 72 are added; claims 1 – 7 and 10 – 72 are pending; claims 25 – 48 are withdrawn from consideration; claims 1 – 7, 10 – 24 and 49 – 72 have been considered on the merits. All arguments have been fully considered.

***Specification***

Objections to the specification have been withdrawn.

***Claim Objections***

1. Claims 56 – 57 and 72 are objected to as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 12, 51, 54 – 55 and 58 – 71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 51 are drawn to a system composition however are rendered vague and indefinite because it is unclear if the repellent chemical must be derived from all of the named limitations. Specifically, by reciting "or artificial and natural life forms", it is unclear if both of these sources must occur at the same time, or if only one may occur to meet the limitation.

In claim 12, the phrase "animal derivative" is confusing because the phrase have not been adequately defined by the claim language or specification. Specifically, it is unclear what applicant regards as an "animal derivative" thus the scope of the claim is unclear.

Claims 54 – 55 and 58 – 71 are indefinite because it is unclear if the polymers comprise the recited types rather than the pluronic polymer, or if the recited polymers are in addition to the claimed pluronic polymer.

***Allowable Subject Matter***

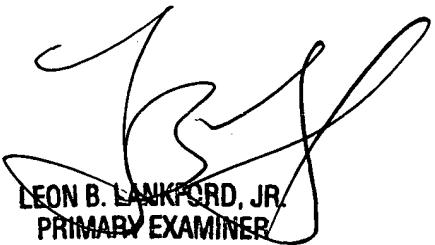
4. Claims 1 – 2, 4 – 7, 10 – 24, 49 – 50 and 52 – 53 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 571-272-0915. The examiner can normally be reached on M-H (7:00-4:30); altn. F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth A. Davis  
September 29, 2005  
AU 1651



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER